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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,200	07/25/2003	Michael J. Walsh	040014-0178	2702

26371 7590 07/27/2006

FOLEY & LARDNER LLP  
777 EAST WISCONSIN AVENUE  
MILWAUKEE, WI 53202-5306

EXAMINER
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NICOLAS, FREDERICK C

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/627,200

Applicant(s)

WALSH ET AL.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-15, 18-22, 25-40 and 43-48 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 37 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5-12, 14, 15, 18-22 and 25-34 is/are allowed.
- 6) ☒ Claim(s) 35, 36, 40, 43, 45, 47 and 48 is/are rejected.
- 7) ☒ Claim(s) 38, 39, 44 and 46 is/are objected to.
- 8) ☒ Claim(s) 1-3, 5-15, 18-22, 25-40 and 43-48 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. <u>7/17/2006</u> .                                   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. The indicated allowability of claim 42 is withdrawn in view of the newly discovered reference(s) to Aulbach 1,768,098 and Bravo et al. 6,530,500. Rejections based on the newly cited reference(s) follow.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the claimed subject matter “the spout including a second and third substantially straight portion extending from opposite sides of the first substantially straight portion each of the second and third portions having a substantially straight upper edge having a second length greater than the first length of the first substantially straight portion” as recited in claim 1; the claimed subject matter “a first straight portion with a first length and a second and third straight portion having a second length greater than the first length, the second and third substantially straight portions extending from opposite sides of the first substantially straight portion” as recited in claim 10; the claimed subject matter “the straight upper edges of the second and third side extending from the first side and through a center line extending perpendicular to the cylindrical wall and parallel to the straight upper edge of the first side” as recited in claims 22 and 33.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 35-36,40,43,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aulbach 1,768,098 in view of Bravo et al. 6,530,500.

Aulbach discloses a paint container as seen in Figure 1, which comprises a body (1) including a top portion (1a), a flat side, and an arcuate side (the rounded corner), the top portion having an opening extending therethrough as seen in Figure 2, a spout (7) coupled to the body and cooperating with the opening in the top portion, the spout being spaced apart from the body and having a first wall with a straight pouring edge (8) proximate the arcuate side of the body (col. 1, ll. 76-80 and as seen in Figure 1), a bottom wall located between the body and the spout (col. 2, ll. 25-31), wherein the body, the spout, and the bottom wall form a channel between the body and the spout (col. 2, ll. 25-31). Aulbach lacks that a bail handle coupled to the body. Bravo et al. teach the use of a bail handle (28) for a container (24) having an arcuate side (58), where the bail handle is coupled to the body of the container between a flat side and the arcuate side as seen in Figure 3.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the bail handle of Bravo et al. onto Aulbach's body as

taught by Bravo et al. in col. 6, ll. 33-49), in order to allow the user a mean of transporting the container.

With respect to claim 40, the claimed subject matter "the container body is substantially D-shaped".

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of the body of Aulbach and Bravo et al. to be D-shaped, since it has been held that a change in the shape of the element involves only routine skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1966).

***Claim Rejections - 35 USC § 103***

5. Claims 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aulbach 1,768,098 in view of Bravo et al. 6,530,500 as applied to claim 35 above, and further in view of Nottingham et al. 6,983,862.

Aulbach-Bravo et al. in combination have taught all the features of the claimed invention except that the flat side of the body includes a recess portion. Nottingham et al. teach the use of a container body (50) having a flat side (54) being recessed to receive a label (col.16, ll. 5-7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the flat side of the container body of Aulbach and Bravo et al. to be recessed, in order to allow the consumer to read and review the material provided on a flat container label as taught by Nottingham et al. in (col. 5, ll. 3-7).

***Allowable Subject Matter***

6. Claims 1-3,5-12,14-15,18-22,25-34 are allowed.

7. Claims 38,39,44,46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments filed 4/24/2006 have been fully considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
July 23, 2006



7/23/06

Frederick C. Nicolas  
Primary Examiner  
Art Unit 3754